

§ 553.222

29 CFR Ch. V (7–1–12 Edition)

(f) A police officer, who has completed his or her tour of duty and who is given a patrol car to drive home and use on personal business, is not working during the travel time even where the radio must be left on so that the officer can respond to emergency calls. Of course, the time spent in responding to such calls is compensable.

(g) The fact that employees cannot return home after work does not necessarily mean that they continue on duty after their shift. For example, employees in fire protection activities working on a forest fire may be transported to a camp after their shift in order to rest and eat a meal. As a practical matter, the employee in fire protection activities may be precluded from going to their homes because of the distance of the fire from their residences.

[52 FR 2032, Jan. 16, 1987; 52 FR 2648, Jan. 23, 1987, as amended at 76 FR 18857, Apr. 5, 2011]

§ 553.222 Sleep time.

(a) Where a public employer elects to pay overtime compensation to employees in fire protection activities and/or law enforcement personnel in accordance with section 7(a)(1) of the Act, the public agency may exclude sleep time from hours worked if all the conditions in § 785.22 of this title are met.

(b) Where the employer has elected to use the section 7(k) exemption, sleep time cannot be excluded from the compensable hours of work where

(1) The employee is on a tour of duty of less than 24 hours, which is the general rule applicable to all employees under § 785.21, and

(2) Where the employee is on a tour of duty of exactly 24 hours, which is a departure from the general rules in part 785.

(c) Sleep time can be excluded from compensable hours of work, however, in the case of police officers or employees in fire protection activities who are on a tour of duty of more than 24 hours, but only if there is an expressed or implied agreement between the employer and the employees to exclude such time. In the absence of such an agreement, the sleep time is compensable. In no event shall the time excluded as sleep time exceed 8 hours in a 24-hour period. If the sleep time is in-

terrupted by a call to duty, the interruption must be counted as hours worked. If the sleep period is interrupted to such an extent that the employee cannot get a reasonable night's sleep (which, for enforcement purposes means at least 5 hours), the entire time must be counted as hours of work.

[52 FR 2032, Jan. 16, 1987, as amended at 76 FR 18857, Apr. 5, 2011]

§ 553.223 Meal time.

(a) If a public agency elects to pay overtime compensation to employees in fire protection activities and law enforcement personnel in accordance with section 7(a)(1) of the Act, the public agency may exclude meal time from hours worked if all the tests in § 785.19 of this title are met.

(b) If a public agency elects to use the section 7(k) exemption, the public agency may, in the case of law enforcement personnel, exclude meal time from hours worked on tours of duty of 24 hours or less, provided that the employee is completely relieved from duty during the meal period, and all the other tests in § 785.19 of this title are met. On the other hand, where law enforcement personnel are required to remain on call in barracks or similar quarters, or are engaged in extended surveillance activities (e.g., “stakeouts”), they are not considered to be completely relieved from duty, and any such meal periods would be compensable.

(c) With respect to employees in fire protection activities employed under section 7(k), who are confined to a duty station, the legislative history of the Act indicates Congressional intent to mandate a departure from the usual FLSA “hours of work” rules and adoption of an overtime standard keyed to the unique concept of “tour of duty” under which employees in fire protection activities are employed. Where the public agency elects to use the section 7(k) exemption for employees in fire protection activities, meal time cannot be excluded from the compensable hours of work where (1) the employee in fire protection activities is on a tour of duty of less than 24 hours, and (2) where the employee in fire protection activities is on a tour of duty of exactly 24 hours, which is a departure

Wage and Hour Division, Labor

§ 553.227

from the general rules in § 785.22 of this title.

(d) In the case of police officers or employees in fire protection activities who are on a tour of duty of more than 24 hours, meal time may be excluded from compensable hours of work provided that the tests in §§ 785.19 and 785.22 of this title are met.

[52 FR 2032, Jan. 16, 1987, as amended at 76 FR 18857, Apr. 5, 2011]

§ 553.224 “Work period” defined.

(a) As used in section 7(k), the term “work period” refers to any established and regularly recurring period of work which, under the terms of the Act and legislative history, cannot be less than 7 consecutive days nor more than 28 consecutive days. Except for this limitation, the work period can be of any length, and it need not coincide with the duty cycle or pay period or with a particular day of the week or hour of the day. Once the beginning and ending time of an employee’s work period is established, however, it remains fixed regardless of how many hours are worked within the period. The beginning and ending of the work period may be changed, provided that the change is intended to be permanent and is not designed to evade the overtime compensation requirements of the Act.

(b) An employer may have one work period applicable to all employees, or different work periods for different employees or groups of employees.

§ 553.225 Early relief.

It is a common practice among employees engaged in fire protection activities to relieve employees on the previous shift prior to the scheduled starting time. Such early relief time may occur pursuant to employee agreement, either expressed or implied. This practice will not have the effect of increasing the number of compensable hours of work for employees employed under section 7(k) where it is voluntary on the part of the employees and does not result, over a period of time, in their failure to receive proper compensation for all hours actually worked. On the other hand, if the practice is required by the employer, the time involved must be added to the em-

ployee’s tour of duty and treated as compensable hours of work.

§ 553.226 Training time.

(a) The general rules for determining the compensability of training time under the FLSA are set forth in §§ 785.27 through 785.32 of this title.

(b) While time spent in attending training required by an employer is normally considered compensable hours of work, following are situations where time spent by employees of State and local governments in required training is considered to be non-compensable:

(1) Attendance outside of regular working hours at specialized or follow-up training, which is required by law for certification of public and private sector employees within a particular governmental jurisdiction (e.g., certification of public and private emergency rescue workers), does not constitute compensable hours of work for public employees within that jurisdiction and subordinate jurisdictions.

(2) Attendance outside of regular working hours at specialized or follow-up training, which is required for certification of employees of a governmental jurisdiction by law of a higher level of government (e.g., where a State or county law imposes a training obligation on city employees), does not constitute compensable hours of work.

(3) Time spent in the training described in paragraphs (b) (1) or (2) of this section is not compensable, even if all or part of the costs of the training is borne by the employer.

(c) Police officers or employees in fire protection activities, who are in attendance at a police or fire academy or other training facility, are not considered to be on duty during those times when they are not in class or at a training session, if they are free to use such time for personal pursuits. Such free time is not compensable.

[52 FR 2032, Jan. 16, 1987, as amended at 76 FR 18857, Apr. 5, 2011]

§ 553.227 Outside employment.

(a) Section 7(p)(1) makes special provision for fire protection and law enforcement employees of public agencies who, at their own option, perform special duty work in fire protection, law